

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 4890
 OR
 525 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B2200212
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
TIAA-CREF Tuition Financing, Inc.	Mike Noone	mnoone@tiaa-cref.org
730 THIRD AVE	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
New York NY 10017	212913-2317	4203

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	TREAS	Robin Lott	517-241-3301	lott@trea.state.mi.us
CONTRACT ADMINISTRATOR	DTMB	Brandon Samuel	(517) 284-7025	SamuelB@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: MESP Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 01, 2012	June 30, 2017	3, 1 year	June 30, 2017
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P Card: <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXPIRATION DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$47,800,000.00		\$0.00	\$47,800,000.00	

DESCRIPTION:
 Effective August 20, 2015, the following amendment is hereby incorporated into the contract per Attachment A Non-Unitary Price Page. This change includes a reduction from 5 Basis Points to 2.0 Basis Points for State Administrative Fees and Total Asset Based Fees.
 Please note TIAA-CREF Tuition Financing, Inc. primary contact has been changed to Mike Noone.
 All other terms, conditions, specifications and pricing remain the same. Per agency request, contractor agreement, and DTMB Procurement approval.

Attachment A, Non-Unitary Price Page

The Contractor's price page is based on a non-unitary fee structure – the total asset based fees equal the fixed Program Manager Fee of 8 basis points plus the cost of underlying funds and the requested State administrative fee of 2.0 basis points. The Non-Unitary Price Page must be utilized during the initial Contract period. An Alternate Price Page titled Unitary Pricing is also included in Attachment A; furthermore, the Alternate Price Page structure must be utilized if requested by the CCI during the term of the Contract. Refer to the fee tables below for actual pricing by investment option in basis points.

It is understood that the existing unitary fee of 35 basis points is in effect for all Investment Options (other than the Principal Plus Interest Option) from June 30, 2012 until the date of the next Program Disclosure Booklet. The new Non-Unitary Price proposal, will take effect as of the date of the next Program Disclosure Booklet through the end of the Contract term unless otherwise determined by the State. It is also understood that the Program Disclosure Booklet with the new Non-Unitary Price Proposal, is currently being drafted and expected to be finalized and implemented by fall 2012.

TOTAL ASSETS UNDER MANAGEMENT (AUM) OF ALL OPTIONS LESS THAN \$3.5 BILLION				
	Weighted Average Underlying Mutual Fund Expenses	Program Manager Fees	State Fees	Total Asset-Based Fees
Age-Based Allocation Options				
Conservative Age-Based Allocation Option				
Ages 0 - 4	15	8	2.0	25
Ages 5 - 8	15	8	2.0	25
Ages 9 - 10	15	8	2.0	25
Ages 11 - 12	16	8	2.0	26
Ages 13 - 14	13	8	2.0	23
Ages 15	11	8	2.0	21
Ages 16	10	8	2.0	20
Ages 17	9	8	2.0	19
Ages 18 +	8	8	2.0	18
Moderate Age-Based Allocation Option				
Ages 0 - 4	14	8	2.0	24
Ages 5 - 8	15	8	2.0	25
Ages 9 - 10	15	8	2.0	25
Ages 11 - 12	15	8	2.0	25
Ages 13 - 14	16	8	2.0	26
Ages 15	14	8	2.0	24
Ages 16	13	8	2.0	23
Ages 17	11	8	2.0	21
Ages 18 +	10	8	2.0	20
Aggressive Age-Based Allocation Option				
Ages 0 - 4	13	8	2.0	23
Ages 5 - 8	14	8	2.0	24
Ages 9 - 10	14	8	2.0	24
Ages 11 - 12	15	8	2.0	25
Ages 13 - 14	15	8	2.0	25
Ages 15	15	8	2.0	25
Ages 16	16	8	2.0	26
Ages 17	16	8	2.0	26
Ages 18 +	13	8	2.0	23
Multi-fund Options				
Global Equity Index Option (currently named the 100% Equity Option)	8	8	2.0	18
Balanced Option	15	8	2.0	25
100% Fixed Income Option	17	8	2.0	27
U.S. Equity Index Option (New)	78	8	2.0	17
International Equity Index Option (New)	12	8	2.0	22
Principal Plus Interest Option*	—	—	*	*

*The Contractor must work with the CCI to implement a process by which Treasury will receive an amount equal to 2.0 basis points of the assets of the Principal Plus Interest Option.

Attachment A, Non-Unitary Price Page

When the total AUM reaches \$3.5 billion, the Contractor must provide a program management fee reduction of 2 basis points as follows:

ALTERNATIVE PRICING: TOTAL AUM OF ALL OPTIONS OVER \$3.5 BILLION				
	Weighted Average Underlying Mutual Fund Expenses	Program Manager Fees	State Fees	Total Asset- Based Fees
Age-Based Allocation Options				
Conservative Age-Based Allocation Option				
Ages 0 - 4	15	6	2.0	23
Ages 5 - 8	15	6	2.0	23
Ages 9 - 10	15	6	2.0	23
Ages 11 - 12	16	6	2.0	24
Ages 13 - 14	13	6	2.0	21
Ages 15	11	6	2.0	19
Ages 16	10	6	2.0	18
Ages 17	9	6	2.0	17
Ages 18 +	8	6	2.0	16
Moderate Age-Based Allocation Option				
Ages 0 - 4	14	6	2.0	22
Ages 5 - 8	15	6	2.0	23
Ages 9 - 10	15	6	2.0	23
Ages 11 - 12	15	6	2.0	23
Ages 13 - 14	16	6	2.0	24
Ages 15	14	6	2.0	22
Ages 16	13	6	2.0	21
Ages 17	11	6	2.0	19
Ages 18 +	10	6	2.0	18
Aggressive Age-Based Allocation Option				
Ages 0 - 4	13	6	2.0	21
Ages 5 - 8	14	6	2.0	22
Ages 9 - 10	14	6	2.0	22
Ages 11 - 12	15	6	2.0	23
Ages 13 - 14	15	6	2.0	23
Ages 15	15	6	2.0	23
Ages 16	16	6	2.0	24
Ages 17	16	6	2.0	24
Ages 18 +	13	6	2.0	21
Multi-fund Options				
Global Equity Index Option (currently named the 100% Equity Option)	8	6	2.0	16
Balanced Option	15	6	2.0	23
100% Fixed Income Option	17	6	2.0	25
U.S. Equity Index Option (New)	7	6	2.0	15
International Equity Index Option (New)	12	6	2.0	20
Principal Plus Interest Option*	—	—	*	*

*The Contractor must work with the CCI to implement a process by which Treasury will receive an amount equal to 2.0 basis points of the assets of the Principal Plus Interest Option.

Attachment A, Non-Unitary Price Page

When the total AUM reaches \$4 billion, the Contractor must provide another program management fee reduction of 1 basis point as follows:

ALTERNATIVE PRICING: TOTAL AUM OF ALL OPTIONS OVER \$4 BILLION				
	Weighted Average Underlying Mutual Fund Expenses	Program Manager Fees	State Fees	Total Asset- Based Fees
Age-Based Allocation Options				
Conservative Age-Based Allocation Option				
Ages 0 - 4	15	5	2.0	22
Ages 5 - 8	15	5	2.0	22
Ages 9 - 10	15	5	2.0	22
Ages 11 - 12	16	5	2.0	23
Ages 13 - 14	13	5	2.0	20
Ages 15	11	5	2.0	18
Ages 16	10	5	2.0	17
Ages 17	9	5	2.0	16
Ages 18 +	8	5	2.0	15
Moderate Age-Based Allocation Option				
Ages 0 - 4	14	5	2.0	21
Ages 5 - 8	15	5	2.0	22
Ages 9 - 10	15	5	2.0	22
Ages 11 - 12	15	5	2.0	22
Ages 13 - 14	16	5	2.0	23
Ages 15	14	5	2.0	21
Ages 16	13	5	2.0	20
Ages 17	11	5	2.0	18
Ages 18 +	10	5	2.0	17
Aggressive Age-Based Allocation Option				
Ages 0 - 4	13	5	2.0	20
Ages 5 - 8	14	5	2.0	21
Ages 9 - 10	14	5	2.0	21
Ages 11 - 12	15	5	2.0	22
Ages 13 - 14	15	5	2.0	22
Ages 15	16	5	2.0	22
Ages 16	16	5	2.0	23
Ages 17	16	5	2.0	23
Ages 18 +	13	5	2.0	20
Multi-fund Options				
Global Equity Index Option (currently named the 100% Equity Option)	9	5	2.0	15
Balanced Option	15	5	2.0	22
100% Fixed Income Option	17	5	2.0	24
U.S. Equity Index Option (New)	7	5	2.0	14
International Equity Index Option (New)	12	5	2.0	19
Principal Plus Interest Option*	—	—	*	*

*The Contractor must work with the CCI to implement a process by which Treasury will receive an amount equal to 2.0 basis points of the assets of the Principal Plus Interest Option.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
 to
CONTRACT NO. 071B2200212
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
TIAA-CREF Tuition Financing, Inc 730 Third Avenue New York, NY 10017	Randy Brady	rbrady@tiaa-cref.org
	TELEPHONE	CONTRACTOR #, MAIL CODE
	704-988-1350	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOC	Robin Lott	514-241-3301	Lottr@michigan.gov
BUYER	DTMB	Chelsea Edgett	517-284-7031	edgettc@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: DIRECT-SOLD MICHIGAN EDUCATION SAVINGS PROGRAM (MESP) SERVICES – DEPARTMENT OF TREASURY			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
July 1, 2012	June 30, 2017	3, one year	
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:			ESTIMATED REVISED AGGREGATE CONTRACT VALUE:	
			\$47,800,000.00	
Effective immediately the primary vendor contact has been changed to: Randy Brady Email: rbrady@tiaa-cref.org, phone: (704)988-1350. Please note the buyer has been changed to Chelsea Edgett				

Change Notice Number ____1____

Contract Number ____071B2200212____

FOR THE CONTRACTOR:

TIAA-CREF Tuition Financing, Inc.

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jeff Brownlee Chief Procurement Officer

Name/Title

DTMB Procurement

Enter Name of Agency

Date

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48913

July 2, 2012

**NOTICE
 OF
 CONTRACT NO. 071B2200212
 Between
 THE STATE OF MICHIGAN
 And**

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017	Doug Chittenden	dchittenden@tiaa-cref.org
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(704) 988-1200	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MDOC	Robin Lott	(517)241-3301	Lottr@michigan.gov
BUYER:	DTMB	Jim Wilson	(517)241-1916	Wilsonj4@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
DIRECT-SOLD MICHIGAN EDUCATION SAVINGS PROGRAM (MESp) SERVICES – DEPARTMENT OF TREASURY			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 Yrs.	July 1, 2012	June 30, 2017	3, One-year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$47,800,000.00

The terms and conditions of the Contract are attached.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48913

CONTRACT NO. 071B2200212

Between
THE STATE OF MICHIGAN
 And

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
TIAA-CREF Tuition Financing, Inc. 730 Third Avenue New York, NY 10017	Doug Chittenden	dchittenden@tiaa-cref.org
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(704) 988-1200	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MDOC	Robin Lott	(517)241-3301	Lottr@michigan.gov
BUYER:	DTMB	Jim Wilson	(517)241-1916	Wilsonj4@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
DIRECT-SOLD MICHIGAN EDUCATION SAVINGS PROGRAM (MESp) SERVICES – DEPARTMENT OF TREASURY			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
5 Yrs.	July 1, 2012	June 30, 2017	3, One-year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of ITB # 071I2200036, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$47,800,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I2200036. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE CONTRACTOR:	FOR THE STATE:
Firm Name	Signature
TIAA-CREF Tuition Financing, Inc.	
Authorized Agent Signature	Name/Title
	Jeff Brownlee, Chief Procurement Officer
Authorized Agent (Print or Type)	Division
	DTMB Procurement
Date	Date



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Attachments

A Non-Unitary Pricing Proposal and Alternate Unitary Pricing Proposal Pricing

Exhibits

- 1 Security Requirements
- 2 Form 4621, What Is An Incident? (Brochure)



DEFINITIONS

24x7x365 means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work that once added will result in the need to provide the Contractor with additional consideration.

Audit Period means the seven year period following Contractor's provision of any work under the Contract.

Bidder(s) are those companies that submit a proposal in response to the RFP.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am EST through 5:00pm EST unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract and is used in MESP's computer system.

Bureau of Investments means [add definition since this entity is frequently identified in the Contract?]

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

Deleted – N/A means that section is not applicable or included in the RFP. This is used as a placeholder to maintain consistent numbering.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

DTMB means the Michigan Department of Technology Management and Budget.

Environmentally Preferable Products means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

Hazardous Material means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

Incident means any interruption in any function performed for the benefit of MESP.

Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

MESP means Michigan Education Savings Program

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

Ozone-depleting Substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

Post-Consumer Waste means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

Post-Industrial Waste means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.



Program means the direct-sold plan of the Michigan Education Savings Program.

QTP means Qualified Tuition Plan

Recycling means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

Reuse means using a product or component of municipal solid waste in its original form more than once.

RFP means a Request for Proposal designed to solicit proposals for services.

Services means any function performed for the benefit of the State under a Statement of Work.

SLA means Service Level Agreement.

Source Reduction means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

State Location means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

Unauthorized Removal means the Contractor's removal of Key Personnel without the prior written consent of the State.

Waste Prevention means source reduction and reuse, but not recycling.

Pollution Prevention means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

Work in Progress means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

Work Product refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor solely for MESP as a result of and in furtherance of performing the services required by the Contract.



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

The purpose of this Contract is to provide Program Management/Administration and Investment Services for the Direct-Sold Michigan Education Savings Program (MESP), within the Department of Treasury.

1.012 Background

The Michigan Education Savings Program (MESP) was created under Public Act No. 161 of 2000 of the State of Michigan (PA 161). MESP offers investment and tax incentives to encourage families and others to save for a student to attend any postsecondary educational institution in the nation. This program is established as a “qualified tuition plan” (QTP) under Section 529 of the Internal Revenue Code (IRC Sec. 529). The State Treasurer is responsible for administering the program and is the trustee for MESP funds. MESP is a direct sold program. As of August 31, 2011, MESP had 270,877 accounts and assets of \$2.7 billion (includes matching grant accounts).

Funds deposited into a MESP account for a given beneficiary will be made available when the beneficiary is enrolled in a postsecondary educational institution. These funds may be used to pay the “qualified higher education expenses” of the account beneficiary, which can include tuition, fees, books, supplies, equipment required for attendance, room and board, up to the amount allowed for room and board in Federal Title IV financial aid programs. (This allowance is established periodically by the U.S. Department of Education.) A 10% federal excise tax will be assessed on withdrawals not used to pay for qualified higher education expenses. Funds may be withdrawn in whole or in part from an account balance upon 60 days notice or a shorter period as authorized in the MESP participation agreement. Savings account earnings are tax deferred and tax exempt to the student or account owner and a state tax exemption will be provided for the earnings in the tax year of a qualified withdrawal.

1.020 Scope of Work and Deliverables

1.021 In Scope

The main objective of this Contract is to provide Program Management/Administration and Investment services for the Direct-Sold MESP.

The Contractor must provide the services necessary for the development, implementation and management of the MESP including but not limited to: record keeping, investment of assets, marketing and promotion; customer service, managerial, professional, clerical, technical and administrative services. All program components and materials developed by the Contractor must be approved by the Contract Compliance Inspector (CCI). The Contractor will need to assist MESP to maintain a savings program that complies with PA 161 and IRC Sec. 529 and have the legal, financial and other resources necessary to do so. Pursuant to PA 161, total program administrative fees cannot exceed 2% of the average daily net assets of the accounts.

1.022 Work and Deliverable

The Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

A. Program Management/Administration

1. The Contractor must administer this program in accordance with Section 529 and all applicable IRS rules, regulations and policies for QTPs.
2. The Contractor must assure the State that both Federal and State securities law registration, exemptions are fully understood and if necessary validation of exemptions are received prior to June 30, 2012. The Contractor must also ensure the State the designated personnel will be qualified under State and Federal Securities laws.
3. In accordance with IRC Sec. 529 the State will be “actively involved” on an ongoing basis in the administration of the Program, including the oversight of all decisions regarding the investment of the assets.



4. The State is not responsible for and will not provide funding of any type in connection with administration of MESP. [See §1.060 and Attachment A of this Contract for provisions on pricing and the administrative fee].

B. Investment Services and Account Maintenance

1. Deleted N/A.
2. Investment Policy
 - a. The Contractor must recommend investment options that will address the unique savings objectives, time horizons and risk tolerances of all investors.
 - b. The Contractor must design investment options that span the risk spectrum from conservative to aggressive to give investors choice.
 - c. The Contractor must provide three separate tracks of the popular Age-Based Options with asset allocations and glide paths that are specifically designed for different levels of risk tolerance, but all have the goal of maximizing returns and the probability of exceeding tuition inflation subject to the constraints of minimizing shortfall in any particular period and producing positive returns for beneficiaries.
 - d. The Contractor must achieve the lowest cost plan possible for MESP's account owners consistent with providing product excellence and choice in investments.
 - e. The Contractor must maximize the use of index funds wherever possible in the Program design to provide transparency, clarity and a low total cost for the Program.
 - f. The Contractor must offer a broad diversification of asset classes to enhance long-term returns and dampen volatility.
 - g. The Contractor must perform the required due diligence for selection and ongoing monitoring of actively managed funds so that style, objectives and performance are consistent with expectations.
3. Process for Analyzing a Client's Existing Investment Policies
 - a. The Contractor must analyze existing policies. The Contractor must take into consideration the following:
 - 1). Does the existing policy allow for a well-designed lineup of investment options at a reasonable price?
 - 2). Does the existing policy address the unique savings objectives, time horizons and risk appetites of all investors?
 - 3). Do the investment options span the risk spectrum from conservative to aggressive?
 - 4). Are there sufficient choices in the age-based options to address the differing needs of all investors while striving to maximize the probability of exceeding tuition inflation?
 - 5). Does existing policy permit broad diversification of asset classes to dampen volatility and maximize long-term returns?
 - 6). If actively managed funds are permitted by the policy, does the policy explicitly address the due diligence fundamentals of fund selection, monitoring, performance and fund replacement?
 - b. To ensure compliance with the investment policy, the Contractor must have or facilitate due diligence meetings with the CCI, Bureau of Investments the underlying funds' portfolio managers and analysts. During this review, a range of investment-related topics must be covered, these include:
 - 1) Overview of Contractor's investment approach and investment management structure
 - 2) Updates on recent economic and financial market developments
 - 3) Notification of any investment personnel changes, changes in investment process, or changes in organizational structure
 - 4) Fund-by-fund performance review, including comparisons of fund performance relative to benchmark and industry peers
 - 5) Evaluation of performance characteristics of plan investment options in relation to plan investment requirements
 - 6) Discussion of investment-related topics as required



The CCI and Bureau of Investments can take part in firm-wide investment review webinars, offered on a quarterly basis. The contractor will arrange to have TIAA-CREF Portfolio Managers of the underlying funds available to discuss investment-related issues during interim periods.

4. Investment Modifications and Investment Monitoring Policy

- a. The Contractor must have an established process of monthly, quarterly and yearly reporting analysis to recommend modifications and monitor investment policy and strategy for the 529 Plans it manages. In addition, the Contractor must work collaboratively with the CCI to modify these reports and processes and develop others to provide the best insights possible.
 - 1) Monthly
Each month, the Contractor must provide a report that includes account and asset growth, and investment performance results. The year-to-date investment performance results must be included for all investment options in the Program.
 - 2) Quarterly
The Contractor must also provide a quarterly investment performance report. The report must include a written investment commentary on financial markets and the investment climate, the specific investment options offered by MESP and the underlying funds used in the investment options. The report must also detail the asset allocation by listing the underlying investments of the investment options and the percentages allocated to those underlying investments for each investment option in the Program. In addition, investment performance charts (3-month, YTD, 1-year, 3-year, 5-year and since inception returns) for the investment options along with their respective benchmarks must be provided. The Contractor must monitor the underlying investment performance on an ongoing basis and must recommend a replacement fund should a fund fail to meet satisfactory performance criteria.
 - 3) Annually
 - a. Each year, the Contractor must conduct an asset allocation study to analyze the asset allocations among the underlying investments of MESP's various investment options. The Contractor must utilize an extensive modeling process in developing the recommended asset allocation strategy. The annual asset allocation study and supporting documents must be presented to the CCI and Bureau of Investments with the report on MESP's performance with recommended asset allocation changes (if any) for consideration. The Contractor must discuss and recommend changes to the Age-Based Allocation Options as well as additions or changes to MESP's other Investment Options. This report provides the basis for discussions regarding investment policy and potential changes in strategy.
 - b. The Contractor may perform more frequent investment reviews. The Contractor must make mid-year recommendations for changes if there are significant market events or material changes to an underlying investment vehicle.
 - c. The Contractor must be ready, on an ongoing basis, to work with the CCI and Bureau of Investments to address issues and concerns as they arise and to develop appropriate responses, analyses and reports.

5. Investment Option Changes – Deleted N/A

6. Asset/Liability Modeling Capability and Portfolio Structure Analysis

The Contractor must utilize a simulation model that looks at probable outcomes of achieving tuition savings goals over many possible economic scenarios. This model must be updated, reviewed, and re-estimated every year by the Contractor's Financial Analysis team to reflect changes in the financial



markets as part of our annual asset allocation study. The simulation must run through the investment horizon of each age band.

a. Deleted N/A.

7. Process for Evaluating a Client's Investment Performance

A. Monitoring of Underlying Funds

The Contractor must regularly monitor underlying fund performance and adherence to investment style and process. For all funds, the Contractor must maintain contact with the Contractor's affiliated Asset Management group, participate regularly in due diligence meetings and seminars, and monitor performance on a monthly and quarterly basis. When questions arise, the Contractor must have direct contacts within its affiliated Asset Management group to get timely and thorough responses. The Contractor must recommend a replacement of any funds that comprise an investment option where circumstances warrant change, such as consistent underperformance or deviation from investment style and process.

8. Deleted N/A.

9. Investment and Economic Research Capabilities and Availability of Research

A. Research Capabilities

The Contractor will liaise with its affiliated asset management Global Equity Research and Fixed Income Research teams, Global Real Estate Teams and Senior Economist to provide research on issues related to the macro-economy, financial markets and long term investing.

B. Availability of Research

The Contractor will make available to the State quarterly conference calls and webinars discussing the state of the economy as produced by its affiliated Asset Management group.

10. Investment Manager Research and Analysis Services

A. The Contractor must provide a due diligence approach for evaluating managers.

B. Methodology for the Analysis of Manager Performance.

The Contractor must use its due diligence guidelines and practices in place to monitor and, if necessary, replace underperforming managers. Performance of Underlying Funds must be followed closely on a quarterly basis. Manager replacement would be accomplished by working with the CCI and Bureau of Investments to present the issue, discuss the evolution of the problem, propose alternatives and implement a solution that has been vetted and agreed to.

Benchmarks for the underlying funds are based on what is documented as each fund's Primary Prospectus Benchmark included in each fund's prospectus. For the age-based and other Investment Options, performance will be measured against their respective blended benchmark returns. The monthly blended benchmark returns for each portfolio are calculated by taking a weighted average of the monthly returns of the primary prospectus benchmarks for each of the underlying mutual funds in an Option, in accordance with the portfolio's target asset allocation among its underlying investments.

For all fund research and monitoring, the Contractor may use the Morningstar database. The Contractor and TIAA-CREF Asset Management will maintain close and ongoing contact with the managers of all of the underlying funds in the Program to get information directly from the original source subject to compliance with all applicable laws.

C. Database Types Used Including Number of Years of Usable Data on Managers

The Contractor has direct access to data and information on all TIAA-CREF mutual funds from TIAA-CREF Asset Management as allowed by applicable law.



11. Deleted N/A

12. The Contractor must continue to offer Educational Programs to prospective college savers on behalf of the Program. The Educational Programs offered are:

- A. **On-site presentations** in the community, in school, or at an employer.
- B. **Individual sessions** with a college savings specialist on the phone or in-person.
- C. **Interactive media** including online webinars, webcasts, and webchats.
- D. **Educational workshops** presented by thought leaders, financial experts, and media.
- E. **Educational challenges, sweepstakes and contests** involving the whole family and the community in saving for college.
- F. **Sponsorships of core community programs with aligned missions.**
- G. **Online tools.**
- H. **Direct Marketing communications** that provide Program details and college savings tips.
- I. **Press releases and media events** with pertinent deadlines, announcements and college savings tips.

13. Proposed Investment Options (as of July, 2012). (Future changes to be approved by the Bureau of Investments.)

- a. Asset allocations and the weights recommended (as of July, 2012).



AGE-BASED ALLOCATION OPTIONS							
	TIAA-CREF Equity Index Fund	TIAA-CREF International Equity Index Fund	TIAA-CREF Emerging Markets Equity Index Fund	TIAA-CREF Real Estate Securities Fund	TIAA-CREF Bond Index Fund	TIAA-CREF Inflation- Linked Bond Fund	T-C Life Funding Agreement
Ticker Symbol	TIEIX	TCIEX	TEQLX	TIREX	TBIIX	TIILX	N/A
M* Rating	4	3	N/A	3	N/A	4	N/A
Expense Ratio (b.p.)	7	9	26	57	13	29	0
Conservative Age-Based Allocation Option							
Ages 0 - 4	39.00%	16.25%	3.25%	6.50%	26.25%	8.75%	
Ages 5 - 8	33.00%	13.75%	2.75%	5.50%	33.75%	11.25%	
Ages 9 - 10	27.00%	11.25%	2.25%	4.50%	41.25%	13.75%	
Ages 11 - 12	21.00%	8.75%	1.75%	3.50%	48.75%	16.25%	
Ages 13 - 14	15.00%	6.25%	1.25%	2.50%	41.25%	13.75%	20.00%
Ages 15	12.00%	5.00%	1.00%	2.00%	37.50%	12.50%	30.00%
Ages 16	9.00%	3.75%	0.75%	1.50%	33.75%	11.25%	40.00%
Ages 17	6.00%	2.50%	0.50%	1.00%	33.75%	11.25%	45.00%
Ages 18 +	3.00%	1.25%	0.25%	0.50%	33.75%	11.25%	50.00%
Moderate Age-Based Allocation Option							
Ages 0 - 4	48.00%	20.00%	4.00%	8.00%	15.00%	5.00%	
Ages 5 - 8	42.00%	17.50%	3.50%	7.00%	22.50%	7.50%	
Ages 9 - 10	36.00%	15.00%	3.00%	6.00%	30.00%	10.00%	
Ages 11 - 12	30.00%	12.50%	2.50%	5.00%	37.50%	12.50%	
Ages 13 - 14	24.00%	10.00%	2.00%	4.00%	45.00%	15.00%	
Ages 15	18.00%	7.50%	1.50%	3.00%	45.00%	15.00%	10.00%
Ages 16	15.00%	6.25%	1.25%	2.50%	41.25%	13.75%	20.00%
Ages 17	12.00%	5.00%	1.00%	2.00%	37.50%	12.50%	30.00%
Ages 18 +	9.00%	3.75%	0.75%	1.50%	33.75%	11.25%	40.00%
Aggressive Age-Based Allocation Option							
Ages 0 - 4	60.00%	25.00%	5.00%	10.00%	0.00%	0.00%	
Ages 5 - 8	51.00%	21.25%	4.25%	8.50%	11.25%	3.75%	
Ages 9 - 10	45.00%	18.75%	3.75%	7.50%	18.75%	6.25%	
Ages 11 - 12	39.00%	16.25%	3.25%	6.50%	26.25%	8.75%	
Ages 13 - 14	33.00%	13.75%	2.75%	5.50%	33.75%	11.25%	
Ages 15	27.00%	11.25%	2.25%	4.50%	41.25%	13.75%	
Ages 16	24.00%	10.00%	2.00%	4.00%	45.00%	15.00%	
Ages 17	21.00%	8.75%	1.75%	3.50%	48.75%	16.25%	
Ages 18 +	15.00%	6.25%	1.25%	2.50%	41.25%	13.75%	20.00%

MULTI-FUND/SINGLE FUND OPTIONS							
	TIAA-CREF Equity Index Fund	TIAA-CREF International Equity Index Fund	TIAA-CREF Emerging Markets Equity Index Fund	TIAA-CREF Real Estate Securities Fund	TIAA-CREF Bond Index Fund	TIAA-CREF Inflation- Linked Bond Fund	T-C Life Funding Agreement
Ticker Symbol	TIEIX	TCIEX	TEQLX	TIREX	TBIIX	TIILX	N/A
M* Rating	4	3	N/A	3	N/A	4	N/A



Expense Ratio (b.p.)	<u>7</u>	<u>9</u>	<u>26</u>	57	13	29	0
Global Equity Index Option (currently named the 100% Equity Option)	70.00%	25.00%	5.00%				
Balanced Option	36.00%	15.00%	3.00%	6.00%	30.00%	10.00%	
100% Fixed Income Option					75.00%	25.00%	
U.S. Equity Index Option (New)	100.00%						
International Equity Index Option (New)		80.00%	20.00%				
Principal Plus Interest Option							100.00%

b. Deleted N/A

c. Mechanism for independent rating of funds

The performance of each of the underlying funds relative to its benchmark must be reported to the CCI and Bureau of Investments on a quarterly basis. This report may include various sector holdings, top 10 holdings and reasons for over or under performance in an analysis of market conditions.

d. Fund Management Team Deleted N/A

14. Proposed Minimum Rate of Return Guaranteed for the Principal Plus Interest Option Offered

The Contractor must continue to facilitate MESP's offering of the Principal Plus Interest Option. MESP's offering of this Investment Option is subject to its ability to obtain a Funding Agreement Contract from TIAA-CREF Life Insurance Company. Pursuant to the Program's agreement with TIAA-CREF Life Company, accumulations (including contributions and earnings) under the existing Funding Agreement for the Principal Plus Interest Option are currently credited with an effective annual interest rate of 1.85%, and are guaranteed to earn this rate through September 30, 2012, subject to the claims-paying ability of TIAA-CREF Life Insurance Company.

15. Organizational Method for Record keeping and Account Maintenance

The Contractor must utilize a Record Keeping and Account Maintenance system offered by Boston Financial Data Services (BFDS) and its sister company Data Systems Technology (DST) to support and service processing. The Contractor must also provide 24-hour self-service functionality on the MESP secure website and automated telephone system, access to experienced 529 telephone representatives and transaction-specific forms to make managing a 529 plan easy and convenient for an account owner. The Contractor and CCI may agree to changes to the recordkeeping and account maintenance functionality, processes and requirements set forth in this Section 15 from time to time, such changes must be approved by the Contractor and CCI. The Contractors Record Keeping and Account Maintenance must ensure the following:

- a. Contractor must assure Separate Accounting for each account owner and beneficiary. The Contractor must establish a unique account number assigned at the time the account is established. This same account number must be used for each investment option in that relationship so the total account contributions and earnings are aggregated and reported on a quarterly statement.
- b. Contractor must assure contributions do not exceed the maximum allowed under PA 161 and IRC Sec. 529 (including any MET contracts purchased for an account beneficiary).

The Contractor must assure that additional contributions are not credited to an account if at the time of contribution, the aggregate account balance of the account and all the other accounts in MESP (as well as in the Michigan Education Trust (MET) program) for the same beneficiary, would exceed a certain market value established by the State, currently \$235,000. Any contributions that would result in the sum of all MESP accounts opened for a beneficiary being in jeopardy of exceeding the maximum account balance limit must be reflected on a next day control report and reviewed by BFDS and TFI on a daily basis. If the beneficiary's account maximum has exceeded the maximum contribution limit, the Contractor must reach out to the account owner to confirm their intent and



determine if the excess contribution can be used for an alternate beneficiary in the Program. If not, the portion of the contribution that would cause the total account balance for the MESP Account(s) of that beneficiary to exceed the maximum account balance limit must be refunded to the account owner.

c. Contractor Methods to Open an Account and Make Deposits.

The Contractor must make it easy to set up a MESP account and to make initial and subsequent contributions. The Contractor must offer three convenient methods to open a new account:

- Online Enrollment.
- Mail-In Application Processing.
- Request delivery of an enrollment kit to one's address for subsequent submission.

1) Online Enrollment Process:

- Displays easy-to-follow new account entry screens.
- Allows the creation of a unique and secure user ID and Password.
- Allows account owners to make initial contributions to the investment options of their choice and to set up an Automatic Contribution Plan linked to their bank account.
- Allows multiple accounts to be established with the same registration information.
- Pre-fills customer information when a new account is opened for an existing customer.
- Verifies and corrects the address and real-time assignment of ZIP + 4 to maintain conformity to US Postal Service standards.
- Ensures the account owner's SSN/TIN is provided.
- Prompts for entry of owner and beneficiary birth date if missing.
- Allows account owners to select eDelivery of statements and set account privileges/preferences.

2) Mail-In Application Processing:

- New Account Applications received by the Program are scanned to create electronic images of the documents, and routed for processing on the day they are received.
- The new account application is examined to ensure all necessary information for processing is provided and is in good order.
- New account applications received in good order are data entered and verified on the day of receipt. The account is established and the initial contribution is credited on the same day based on the information and instructions provided by the prospective account owner.
- The account address is systematically verified and corrected based on post office records at time of data entry.
- Checks accompanying new account applications are imaged and electronically routed to an operator. The contribution information is data-entered into the processing system, verified and the contribution is posted automatically to the newly established account.
- New account applications that are missing information or not received in good order are routed for research and/or follow-up contact with the prospective account owner.

3) Delivered Enrollment Kit:

- The Contractor must deliver hardcopy enrollment kits to potential participants upon request.

d. Method of Assessing Non-Qualified Withdrawals.

The Contractor must offer account owners at a minimum two methods of requesting a withdrawal:

- 1) Online (through the Program's secure website).
- 2) Completing a withdrawal form.



All withdrawals must be reflected on the year-end Form 1099-Q mailed to account owners.

e. Method of Providing Department of Treasury Online Access to Account Information.

The Contractor must continue to provide Treasury with access to MESP program data online through DST's Vision® system. Vision provides complete, reliable information for program accounts and investment options via web access on a daily basis. It is a web-based system that interfaces with the TA2000 recordkeeping system and provides Program-level and account owner information daily. Vision also has reporting functionality that must continue to allow Treasury to create ad hoc reports as needed.

On a Plan level, Vision will provide summary data for items, such as:

- Number of accounts.
- Number of shares.
- Assets.
- Percentage invested in each investment option.
- Each investment option's price as of the last trust unit value.
- Net change in dollars and percentage.
- Withdrawal and contribution information.

- f. The Contractor must continue to work with the State's choice of auditor to fully support the completion of the annual audit for MESP. In addition to the annual program audit, semi-annual audits of internal controls and computer systems are conducted by BFDS under SSAE 16.
- g. The Contractor must ensure that qualified withdrawals are made timely either by check directly to a postsecondary educational institution, jointly to a beneficiary and postsecondary educational institution or directly to an account owner upon receipt of an appropriate withdrawal request.
- h. The Contractor must provide the functionality to allow transfer of accounts to "members of the family" of the beneficiary as defined in IRC Sec. 529.

The Contractor must allow an account owner to submit a Change of Account Owner Form which can be downloaded from the MESP website or requested from the Account Service Telephone Center to transfer accounts to "members of the family."

i. Method for Providing On-line Inquiry to allow Treasury the ability to validate a Claimed Income Tax Deduction.

The Contractor must allow Treasury the access to view contribution and withdrawal information online through the DST Vision system.

- j. Deleted N/A.

16. Deleted N/A

17. Organizational Plans to Collect State Matching Grant Funds for New Accounts that Qualify to Receive State Matching Grant Funds.

- A. The Contractor must be able to, if necessary, track Matching Grant funds separately from account owner deposits. TFI will have the procedures and policies in place to accept new Matching Grant funds should the Matching Grant Program be re-opened to new entrants.

18. Account Ownership, Account Contributors and Successors of Accounts as it relates to Multiple Accounts

The Contractor must allow an individual Account Owner the ability to designate a Contingent Account Owner to become the owner of his/her Account in the event of their death. The Contractor must also allow



the Account Owner to change ownership of all or a portion of his/her Account to another individual or entity that is eligible to be an Account Owner in MESP.

19. Payment Options Available for Program Participants to Make Initial and Subsequent Contributions

The Contractor and CCI may agree to changes to contribution functionality, processes and requirements set forth in this Section 19 from time to time, such changes must be approved by the Contractor and CCI.

- 1) The Contractor must offer contributions by check. Contributions by check must be accepted at any time, subject to the limits set forth in the Program as to the acceptable forms of payment. There is no imposed maximum amount for checks; however, contributions made by check or any other method of payment cannot exceed the Program's maximum account balance limit for a beneficiary. Checks must be written on behalf of U.S. banks.
- 2) The Contractor must offer contributions by Automatic Contribution Plan (ACP). Contributions by ACP must be accepted if an account owner submits the Account Application with banking information, or submits an Electronic Banking Information Form, or establishes ACP through online Account Access after an account is established and then authorizes the Program to debit funds from a checking or savings account owned by the account owner.
- 3) The Contractor must offer contributions by Electronic Fund Transfer (EFT). Contributions by EFT must be accepted if an account owner submits the Account Application with banking information, or the Electronic Banking Information Form, or establishes EFT through online Account Access after an account is established and then authorizes the Program to debit funds from a checking or savings account owned by the account owner. Once an EFT is established, the account owner can authorize a contribution at any time by telephone (automated or live) or through online account access.
- 4) The Contractor must offer contributions by Payroll Deduction. Contributions by Payroll Deduction are accepted from all employers who agree to remit contributions to the Program on behalf of an account owner and the account owner submits the appropriate Program form. The availability of payroll deduction is not limited to a particular employer size. Payment is made typically by Automated Clearing House (ACH), but alternate payment methods can be accommodated. There are no costs to an employer associated with offering payroll deduction to their employees.
- 5) The Contractor must offer contribution by rollover. Contributions by rollover from another Qualified Tuition Program (QTP) must be accepted either directly from the former Program (direct rollover) or by check from the account owner (indirect rollover).

20. The Contractor must offer a payment posting process for participant accounts.

The Contractor must process contributions received prior to 4:00 pm EST on a valid business day and received in good order on the day of receipt. The contribution must be applied to the account using that night's trust unit value. If for some reason processing is delayed, the account owner must receive the trade date of when the funds were received in good order.

A. When Earnings begin to accumulate

The Contractor must allow contributions to be applied to an account with the trust unit value calculated for that day. The Contractor must allow earnings to begin to accumulate on the following business day and be reflected in the trust unit value of each investment option.

21. Procedure to Prevent Excess Contributions to Beneficiary Accounts allowed by MESP in compliance with PA 161 and IRC Sec. 529



The Contractor each day, must review a control report that identifies if any contribution received has resulted in the sum of all MESP accounts opened for a beneficiary to exceed the maximum account balance limit (\$235,000). If the maximum has been exceeded, the Contractor must call the account owner to confirm their intent and determine if the excess contribution can be used for an alternate beneficiary in the Program. If not, the portion of the contribution that would cause the total account balance for the MESP account(s) of that beneficiary to exceed the maximum account balance limit must be refunded.

A. Excess Contribution Process-

The Contractor must monitor that additional contributions are not credited to an account if at the time of contribution, the aggregate account balance of the account and all other accounts in MESP (as well as the MET Program) for the same beneficiary would exceed a certain market value established by the State, currently \$235,000. The Contractor must review a daily report that identifies all MESP excess contributions and then take the appropriate steps to refund the contribution to the account owner or to apply the contribution to another beneficiary's account if requested by the account owner. If the account falls below the \$235,000 limit due to market fluctuations, additional contributions can be made to the beneficiary's account up to the maximum account balance limit.

B. Excess Contribution Participant Notification-

If the beneficiary's account(s) has exceeded the maximum contribution limit, the Contractor must reach out to the account owner to confirm their intent and determine if the excess contribution can be used for an alternate beneficiary in the Program. If not, the portion of the contribution that caused the total account balance for the MESP Account(s) of that beneficiary to exceed the maximum account balance limit must be returned to the account owner.

C. Compliance Coordination with the MET and MAP programs-

The Contractor must coordinate aggregation compliance with the MET and MAP programs. The Contractor must transmit a daily file to the State containing those beneficiaries whose account balances are above a certain limit, currently \$180,000 or more. The State is responsible for disallowing purchases of MET contracts for beneficiaries where the purchase will cause the total MESP and MET account balance to exceed the maximum account balance limit. In addition, the Contractor must implement a similar daily electronic file transfer process, with the Advisor Plan Manager, to ensure that no beneficiary exceeds the \$235,000 limit regardless of the Michigan 529 plan in which they participate.

22. Inactive Account Management

The Contractor must provide all account owners, regardless of their MESP balance, a quarterly statement that encourages saving for college. In addition, direct mail campaigns must target account owners that have not contributed to their account over a certain period. The Contractor must also work with the CCI, at the CCI's direction, to develop special procedures for the handling of inactive accounts.

23. The Contractor, must prevent an account owner from opening multiple accounts for the same beneficiary. The Contractor's TA2000 recordkeeping system will not allow multiple accounts for the same account owner beneficiary relationship to be issued. The Contractor's system must be programmed to reject a new account number if the Contractor already has the account owner and beneficiary Social Security numbers in the recordkeeping system.

24. The Contractor must maintain account data to ensure that the current accumulated contributions and accumulated earnings for each participant are available on a daily basis.

The Contractor's recordkeeping system must be designed to assign each account owner beneficiary relationship with a unique account number and all investment options within that relationship are aggregated together for contribution and earnings calculations. Earnings must be reflected within each investment option's variable Trust Unit Value. Account owners must be able to access their account



values daily through the Automated Telephone Service or through the MESP website and on the account statements.

a. Deleted N/A

25. Maintenance and Administration of the Match Program for Saving for Education, Entrepreneurship, and Down payment Policy and Practice Initiative (SEED) participants and any other approved organization.

The Contractor must track and provide data for participants related to specific account owners. Additionally, Contractor must accept matching funds from other organizations. Detailed specifications will be determined with the CCI after Contract execution.

The Contractor must continue to adhere to its agreement with the Oakland-Livingston Human Services Agency and Washington University, and the Letter of Understanding with the Michigan Department of Treasury, which confirms that agreement, both dated December 21, 2004, with regard to the CFED-sponsored SEED Policy and Practice Initiative.

26. The Contractor must NOT issue Bi-weekly confirmation statements to State of Michigan employees on payroll deduction.

27. Deleted N/A.

28. **Systems Capabilities**

- A. The Contractor must assist the State and other contractors with problem resolutions including, but not limited to, establishing new communications channels, downtime, testing, etc.

B. Organizational Method for Providing Additional Data Interface

The Contractor's method of transmitting data between the Contractor and the State must be through the use of File Transfer Protocol (FTP). Data exchanged through this method is encrypted. The Contractor will use PGP or some other comparable secure data transmission and encryption method subject to CCI approval.

C. Contractors Disaster Recovery and Business Continuity Plans.

- 1) The Contractor must have Disaster and Business continuity plans for this Contract including:

- a) A Recovery Time Objective (time to recover functionality).
- b) A Recovery Point Objective (amount of data that can be lost).

The Contractor must have a Recovery Time Objective of 0-4 hours. For the Recovery Point Objective, an asynchronous data replication must be used; any data accessed must be backed up in the DST environment limiting any data loss to less than 30 minutes.

The Contractor must maintain active business continuity programs that effectively provide the ability to survive a disruption to normal business operations by maintaining a continuous operations environment.

D. MESP Hardware Configuration.

The DST Recordkeeping system must provide flexible, configurable solutions that support a wide variety of investment products, distribution channels, workflows, external vendors, and technology. The recordkeeping applications reside on an integrated combination of mainframe and server-based



platforms. All of the hardware and requisite software runs at DST Systems, the system provider for BFDS.

E. MESP software configuration

The Contractor offers TA2000 that provides high-quality software solutions to support transfer agency processing requirements. TA2000 offers a broad range of functionality for 529 plan processing based on both regulatory requirements and client-driven initiatives.

The BFDS recordkeeping systems are flexible and allow for customization. Some of the key features for supporting 529 plans include:

- Support of all standard share classes for 529 plan fund offerings.
- Ability to set up new accounts through the Internet, paper applications and inbound transmissions.
- A customizable account owner website supports inquiry, new account, maintenance updates and financial transaction processing.
- Supports calculation method for maximum account balance limit contribution valuation.
- Allows authorized state administrators and financial intermediaries to access account data through Vision®, DST's Internet feature.
- Vision, includes a resource center that would contain basic information on MESP with high-level plan characteristics and hyperlinks to other important 529 resources on the Internet.
- Ability to provide a daily aggregation process that will report the following:
 - Beneficiaries with plan values that exceed the state maximum allowed.
 - Owner/beneficiaries that have reallocated the plan assets the previous day.
 - Owner/beneficiaries that have taken a withdrawal from the plan the previous day.
- Supports multiple distribution types to owner, beneficiary, and third party, including:
 - Qualified.
 - Qualified to a College/University.
 - Non-qualified (including disability, death, and scholarship).
- Displays 529 plan inception-to-date contributions and earnings at the beneficiary and legal ownership levels on inquiry screens.
- Captures recipient information during redemption processing including; distribution types, and contribution/earnings breakdowns for rollovers that are sent to another state plan.
- Systematically tracks regulatory requirements limiting 529 investment strategy changes to once a year.
- Provides standard transmission interfaces of 529 account information to clients or third-party affiliates.
- Offers systematic investment changes based on beneficiary's age.
- Provides ability to process 529 purchases via a payroll transmission for multiple 529 groups.

F. Data and System Security

- 1) Contractor must comply with Exhibit 1, Security Requirements.
- 2) As a result of the Systems Engineering Methodology (SEM) that was governed by the State Unified Information Technology Environment (SUITE), a DIT-0170, *Information Technology Project Security Plan & Assessment* is required. It is a collaborated effort between DTMB, Treasury's Security Division (Treasury Security), and the Contractor to complete the DIT-0170. The DIT-0170 provides an overview of the security requirements for the system and a description of the security controls in place or planned for meeting those requirements. Completion of the DIT-0170, remedies of any identified issues, and approval, are required prior to implementation. This is a living document and must be reviewed when any system/organizational changes occur and new security control requirements are implemented (e.g., laws, policies, etc.); otherwise, it



should be reviewed annually. The DIT-0170 may need to be revised to address system/organizational changes or problems identified during implementation or security control assessments.

- 3) The Contractor must perform annual testing of all security control requirements to determine they are working as intended. Annual certification must be provided in writing to the CCI or designee in the form of a SSAE16 or similar audit report within 30 days of completion of the audit report.

a) Deleted N/A.

29. Customer Service

A. Implement, Track and Measure Effectiveness

The Contractor must deliver client-focused service to provide college savings solutions through two call centers: an Education Savings call center (staffed with licensed representatives who discuss specific features of MESP with prospective account owners) and an Account Service Center through its partnership with BFDS, which handles 529 plan service calls on behalf of the Contractor.

The Contractor must monitor prospective or existing customer interactions with each representative responsible for providing the response that addresses the caller's specific situation. The Contractor must meet this standard by conducting internal quality programs, monitoring on average three calls per representative each week and giving feedback to call representatives. In addition, service calls are monitored by an independent company, which provides detailed call analysis and feedback.

- B. The Contractor must provide a toll free phone number and customer service representatives available to participants during normal business and off peak hours.

The Contractor must successfully employ a dual service strategy to provide account owners and prospects with specialized service while offering an integrated approach to call center management. By maintaining a single toll-free number for MESP, various menu prompts will allow callers to reach the Education Savings Center, the Account Service Center, or the Automated Response System during business hours (8:00 a.m. – 8:00pm EST).

The Education Savings Center focuses on prospective account owners as well as those callers with investment and savings strategy inquiries, which may require the assistance of a licensed representative. The Account Service Center focuses on account-related maintenance calls.

Calls are handled in five locations within the United States. All calls must be tracked against various metrics to determine the call centers' service level and all calls are recorded for quality assurance purposes.

The Automated Response System must provide current unit values and balances, and allow an existing account owner to make a contribution or request a duplicate statement. A caller must be able to transfer back to the main menu and speak with a live representative during business hours.

During peak hours and peak seasons both telephone centers must have the ability to modify shifts and add trained representatives.

C. Method and Frequency of Communicating to the CCI Customer Concerns and Comments

Account owner feedback must be captured by the Contractor's customer service representatives. Account owner feedback must be used to identify trends and potential areas of process improvement. Account owner feedback must be shared with the CCI but also with the call center training departments to ensure the feedback is incorporated into future training classes.

Procedures must be in place to handle and communicate both verbal and written concerns and comments. Telephone complaints must be handled by the representative who receives the call. The call center's immediate goal must be to understand the account owner's issue and provide a solution



that will satisfy the caller. If the telephone representative is unable to provide a resolution, the call must be escalated to a senior representative and then to a manager, if necessary. All telephone calls must be recorded and tracked for quality control and review purposes. The Contractor and/or BFDS operations staff must be called upon to review the facts, determine the underlying cause of the account owner's dissatisfaction and also determine if an adjustment or exception processing is warranted. Telephone complaints must be brought to the attention of the MESP Relationship Manager for discussion with the CCI. Written complaints must be researched by the Contractor's operations team and responded to in writing. An initial outreach to the account owner must be made by telephone and/or in writing, as needed. The Contractor's goal is to resolve all written complaints within seven days. The Contractor's operations team must review complaints (both telephone and written) to determine how to improve our processes and thereby enhance the account owner experience.

Customer concerns must be reported quarterly.

D. Michigan Based Office of Convenience.

The Contractor must have Michigan based representatives at Michigan based offices. The Contractor and its affiliated companies currently have locations in Southfield, Ann Arbor and East Lansing. MESP information is available at each office. The Contractor has hired a Michigan-based Senior Marketing Manager, allowing appointments to be scheduled while providing more detailed information and education on the features and benefits of MESP.

E. Participant Enrollment Process to include Web-Based Options

1) Online Enrollment Process:

The Contractor must continue to offer enrollment online. The Program's website is a real-time function that allows prospective account owners to quickly and easily establish a MESP account.

- Displays easy-to-follow new account entry screens
- Allows the creation of a unique and secure user ID and Password
- Allows account owners to make initial contributions to the investment options of their choice and set up an Automatic Contribution Plan linked to their bank account
- Allows multiple accounts to be established with the same registration information
- Pre-fills customer information when a new account is opened for an existing customer
- Verifies and corrects the address and real-time assignment of ZIP + 4 to maintain conformity to US Postal Service standards
- Ensures the account owner's SSN/TIN is provided
- Prompts for entry of owner and beneficiary birth date if missing
- Allows account owners to select eDelivery of statements and set account privileges/preferences.

New account letters must be generated at the time an account is established. These letters welcome the account owner to the Program and provide a concise summary of the newly established account details.

31. Marketing

A. Organization's Marketing Plan for the MESP

Contractor will work with the State as appropriate to develop marketing materials-broad enough to encompass MET, MAP and other postsecondary education finance options offered by the State. Current programs include Office of Scholarships and Grants, Michigan Higher Education Student Loan Authority and Michigan Guaranty Agency. Marketing materials, at a minimum, must include, but not be limited to, the following:



1. MESP logo;
2. Program brochures;
3. Print advertising and press releases;
4. Radio and TV advertising
5. MESP participation agreement for potential participants which must include, but not be limited to:
 - a) name, address and social security number or employer identification number of the account owner;
 - b) a designated beneficiary;
 - c) name, address and social security number of the designated beneficiary; and
 - d) any other information that the CCI or Contractor considers necessary.

The Contractor must continue to utilize multiple channels, campaign messaging, targeted audiences, all combined with a strong positioning statement that will clearly communicate that MESP is a low cost, tax-advantaged 529 college savings plan for Michigan residents and for families anywhere in the country. The Contractor's state-centric strategy must consist of nine important goals that are critical in delivering a successful and innovative marketing plan for MESP:

- 1) **Implement a successful integrated marketing approach** utilizing multiple channels and tactics and meaningful messaging to various target markets.
- 2) **Market statewide and target particular demographics** with sensitivity to include minority and ethnic marketing.
- 3) **Invest in Michigan** by continuing to build stronger ties and partnerships with our Michigan community. Contractor must use Michigan contractors whenever possible.
- 4) **Incorporate MET and other State agencies** into the Contractor's marketing strategy to unite in educating Michigan families on saving, planning and paying for college.
- 5) **Strongly position MESP's existing well-known brand** in Michigan and nationwide as one of the lower cost 529 plans in the nation.
- 6) **Create impressionable and educational marketing programs** that involve the entire family in learning sound college savings strategies.
- 7) **Provide service and education** through the college savings experts whether on-site, in person, or on the phone.
- 8) **Add to our selection of online tools and resources** to keep MESP on the forefront of state-of-the-art technology.
- 9) **Measure success of marketing initiatives** and conduct ongoing research to learn best practices and gauge success of marketing by establishing benchmarks and tracking results.

The Contractor must maintain a marketing budget of \$1,850,000 for each full calendar year of the Contract starting with January 1, 2013. For any partial year period during which the Contract is in effect, the Contractor will expend a portion of such amount pro-rated to reflect the number of months during which the Contract is in effect. The marketing budget will be allocated to each of the marketing channels and tactics presented in each year's marketing plan as reviewed and approval by the CCI.

The Contractor's Marketing Plan is a series of marketing activities that cater to *all* parents and grandparents statewide.

- B. The CCI must approve the marketing plan/materials before the plan is implemented.
- C. Contractor must implement a pilot joint marketing campaign each Contract year with MET for either tax season, back-to-school, holiday season, or mutually agreed upon time to include, but not be limited to, joint advertising (radio, TV and/or print) and public relations events.
- D. Web site development, maintenance and administration must include, but not be limited to:
 1. Specific MESP information (i.e. enrollment information, investment option performance, etc.).
 2. New account processing or ability to request program agreement and materials.
 3. Customer service information to include business hours (time zone) and toll free phone number
 4. Secured access by client and CCI or designee to specific file or reporting data (see Section 1.022.28.f for data security requirements). Access rights will be defined by the CCI.



5. Ability to capture number of hits to MESP portion of web site.
 6. Direct link to MET, MAP and Treasury related web sites. Link to MET & MAP must be on MESP web site homepage.
 7. Compliance with e-Michigan standards for web site requirements per section 2.271.
- E. The Contractor must have a direct mail campaign.
- F. A MET representative must be invited to participate in all outreach presentations/ meetings, including employer outreach meetings.
- G. The Contractor will send marketing materials to the CCI for review. After review by the CCI, the Contractor's compliance team will review materials within 5 business days or upon demand if a quick turn-around is necessary. Once the CCI and Compliance have completed their reviews, an additional day or two may be needed to make changes before the marketing piece is ready for-production.
32. End of Contract Data Conversion Responsibility: At the expiration or termination of this Contract, the Contractor must work with State personnel to ensure the transitional and operational continuity of the services under this Contract. The Contractor agrees to assist the State for a reasonable period of time that in no event will exceed six months after the expiration or termination date of this Contract and to assign key personnel as needed to assist in the transition. Key system staff must be available to ensure data integrity and system continuity (also see section 2.170).

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

1. Central point of contact for all contractual activities is Randy Brady.
2. Contractor staff who will be involved in the project, including the name of each individual, work locations, and detailed descriptions of their roles and responsibilities follow:
 - A. *Doug Chittenden*, Senior Vice President of TIAA-CREF and President of TIAA-CREF Tuition Financing, Inc., who is based in Charlotte, North Carolina, is ultimately responsible for all services provided to all state programs managed by TFI.
 - B. *Craig Parkin*, Director, and Pamela McNulty, Senior Director provide management oversight of the MESP engagement. Craig is based in Charlotte, North Carolina. Pam is based in Hamden, Connecticut.
 - C. *Jennifer Howey* will be the Program Marketing Manager assigned to MESP. Jennifer Howey will manage TFI marketing and distribution in Michigan and will provide field support. These efforts will include working with local schools, colleges, universities, employers, financial professionals and associations through presentations, and webinars, as well as supporting community outreach events, sponsorships and promotions. This Program Marketing Manager will work closely with the CCI in coordinating grassroots efforts and all strategic marketing campaigns and tactics. Jennifer is based in Wyandotte, Michigan.
 - D. *Joe Del Grande* is the Senior Operations Officer and Director of Product Management. Joe is the Contractor chief liaison with Boston Financial Data Services (BFDS) and State Street Corporation (State Street). Joe manages a team responsible for quarterly age band rolls, maintaining investment option allocations, operational and investment reporting, and working with the TIAA-CREF Asset Management group. He is based in New York City.
 - E. *Ed Mihalho* is the Director for Investment and Product Strategies. Ed's duties include investment management, working with TIAA-CREF's Asset Management group and conducting quarterly investment reviews and annual asset allocation meetings with state clients. Ed is based in New York City.
 - F. *Joe Troscher* is the Director in charge of Education Savings Telephone Centers in Denver and Charlotte. Joe is responsible for training and managing call center operations, including consulting operations and service



call center quality control. He is located in Charlotte, NC.

- G. *Marc Speiser*, Senior Business Analyst, assists Craig Parkin and is part of TFI's Michigan Team. Marc is based in East Lansing, MI.

H. Subcontractors:

- 1) Boston Financial Data Services (BFDS): BFDS is the transfer agent providing account administration, record keeping and system services.
 - a. Bob Chabot is BFDS' point of contact and is located in Quincy, MA.
- 2) State Street Bank & Trust: State Street is the Funds custodian.
 - a. James Keenan is the State Street point of contact and is located in Boston, MA.
- 3) Data Systems Technology (DST): DST provides system support, service processing and hosting.

1.040 Project Plan

1.041 Project Plan Management

1. The Contractor must carry out this project under the direction and control of the CCI if necessary for new initiatives. (Subcontractors).
2. Although there will be continuous liaison with the Contractor team, the CCI must meet monthly at minimum, or as requested by the CCI, with the Contractor's Project Manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.
3. The Contractor must submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's Project Director; and notification of any significant deviation from previously agreed-upon work plans.
4. Within five working days of Contract award, the Contractor must submit to the CCI for final approval a project plan. This final project plan must be in agreement with the proposed plan by the Contractor and accepted by the State for Contract, and must include the following:
 - a. The Contractor's project organizational structure.
 - b. The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
 - c. The project breakdown showing **sub-projects, activities and tasks, and resources required and allocated to each.**

1.042 Reports

1. The Contractor is required to provide, at a minimum, the following reports:
 - A. The Contractor reports must include requirements of PA 161 and IRC Sec. 529:



- 1) Quarterly and annual statements to account owners.
- 2) 1099-Q information to the Internal Revenue Service and account owners.

The Contractor must continue to deliver quarterly and annual account statements to account owners within five days after the end of the quarter/year. These account statements must include the account owner's MESP account balance, current and prior year contribution totals, personalized performance information and all transactions processed during the quarter/year. The Contractor must also mail 1099Q statements to all account owners who have made redemptions from their 529 account during the year. The 1099Q statements must be mailed to account owners and the IRS by the January 31st deadline.

- B. The Contractor must provide Quarterly reports to the State Treasurer and the MET Board of the investment performance. The report must include, but not be limited to:
 - 1) Names and identification numbers of account owners, designated beneficiaries and distributees of accounts.
 - 2) The total amount contributed to all accounts during the year.
 - 3) All distributions from all accounts and whether or not each distribution was a qualified withdrawal.
 - 4) Account management fee adjustment.
 - 5) Presentation of performance results calculated according to criteria set by Association for Investment Management and Research "AIMR" with comparison to appropriate benchmarks, and rankings by rating agencies (such as Morningstar or Value Line).
 - 6) Any other information that the State Treasurer may require regarding amounts contributed to or withdrawn from accounts.
- C. Deleted N/A.
- D. The Contractor must provide audited financial statements on an annual basis in accordance with the requirements of the Michigan Department of Auditor General for inclusion in the State of Michigan Comprehensive Annual Financial Report (SOMCAFR).
- E. The Contractor must continue to provide reports as required by the CCI in addition to the weekly, monthly and quarterly reports.
- F. The Contractor must continue to provide Quarterly detailed report of marketing expenditures.
- G. The Contractor must continue to provide Monthly call center reports to include the number of calls, the average length of time customers are on hold, number of complaints, timely resolution, and number of dropped calls.
- H. Quarterly marketing reports.

The Contractor must continue to deliver a detailed monthly marketing report to the CCI within 10 business days of the following month (or upon a mutually agreed upon frequency). The report must include an overview of monthly marketing activities including:

- Commentary on campaigns and seasonal messaging.
- A summary of the number of activities, webinar attendees, and other pertinent metrics.
- Descriptions, photos, and metrics of monthly marketing initiatives, including:
 - Community events
 - Employer presentations
 - Media placement
 - Public relations hits
 - Webinar attendance
 - Online activities
 - MET and MESP joint marketing efforts
 - List of upcoming events.

**1.050 Acceptance****1.051 Criteria**

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this SOW:

Acceptance of the Services and/or Deliverables provided under this SOW will be determined by completion of deliverables in section 1.022.

1.052 Final Acceptance - Deleted - N/A**1.060 Proposal Pricing****1.061 Proposal Pricing**

1. For authorized Services and Price List, see Attachment A.
 - A. The Non-Unitary Price Proposal must be utilized during the initial Contract period.
 - B. An Alternate Price Proposal titled Unitary Pricing is also included in Attachment A. This price structure must be utilized at the CCI's request upon reasonable notice to the Contractor.
2. Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See www.michigan.gov/dtmb for current rates.
3. Invoicing and payment must occur per section 2.044.d.

1.062 Price Term

Prices quoted are firm for the entire length of the Contract.

1.063 Tax Excluded from Price

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback - Deleted - N/A



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of approximately five years, beginning July 1, 2012 through June 30, 2017 (see section 1.011). All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to three additional one-year periods.

2.003 Legal Effect

Contractor must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under the Contract, until Contractor is notified in writing that the Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing the Contract, are incorporated in their entirety and form part of the Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown, however, the Contractor must furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 Headings

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

**2.008 Form, Function & Utility**

If the Contract is for use of more than one (1) State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration**2.021 Issuing Office**

The Contract is issued by the Department of Technology, Management and Budget, Procurement and the Department of Treasury (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Procurement **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within Procurement for the Contract is:

Jim Wilson
Procurement
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: wilsonj4@michigan.gov
Phone: 517-241-1916

2.022 Contract Compliance Inspector

After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Director of Procurement, in consultation with Treasury will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB Procurement.** The CCI for the Contract is:

Robin Lott
Department of Treasury
Michigan Education Trust.

**2.024 Change Requests**

The State reserves the right to request, from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DTMB-Procurement.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be deemed to be an employee, agent or servant of the State for any reason. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties must not unreasonably delay, condition, or withhold the giving of any consent, decision, or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

- (a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract.



The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.

(c) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution

Procurement retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Procurement.

2.033 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent the Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under the Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables



Each Statement of Work or Purchase Order issued under the Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties must negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under the Contract, the State must not be obligated to pay any amounts in addition to the charges specified in the Contract.

2.044 Invoicing and Payment – In General

(a) Each Statement of Work issued under the Contract must list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices must reflect actual work done. Pricing will be based on basis points of the total assets. Payment for work done under this Contract will occur monthly based on the average daily net assets of the direct-sold Program. Specific details of invoices and payments will be agreed upon between the CCI and the Contractor.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) must mutually agree upon. The schedule must show payment amount and must reflect actual work done by the payment dates less any penalty cost charges accrued by those dates. As a general policy, statements must be forwarded to the designated representative by the 15th day of the following month.

2.045 Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services must be pro-rated for any partial month.

2.046 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of the Contract.

**2.047 Final Payment**

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (1) party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).¹

2.050 Taxes**2.051 Employment Taxes**

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two (2) or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management**2.061 Contractor Personnel Qualifications**

All persons assigned by Contractor to the performance of Services under the Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of the Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

(a) The Contractor must provide the CCI with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.



(d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract must perform their duties either primarily at Contractor's offices and facilities, at a home office or at State facilities. Without limiting the generality of the foregoing, Key Personnel must, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.066 Cooperation with Third Parties

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under the Contract with the requests for access.

2.067 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities, and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.068 Contract Management Responsibilities

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors, such approval will not be unreasonably withheld. The State reserves the right to require the Contractor to replace Subcontractors found to be unacceptable pursuant to Section 2.072 of the Contract.



The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

Contractor has full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under the Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Contractor must not delegate any duties under the Contract to a Subcontractor unless the DTMB-Procurement has given written consent to such delegation. The State reserves the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.121(c), 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

The Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.080 State Responsibilities

2.081 Equipment

The State must provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and, unless agreed otherwise by the parties in



writing, must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services.

Contractor must not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.083 State Performance duties

The State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by the Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under the Contract to the extent such default or delay is caused by non-performance of the State's obligations under this Contract, provided Contractor provides the State with reasonable notice of such nonperformance and the Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Sections 2.024**.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel must agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements - Deleted - N/A

2.100 Confidentiality

2.101 Confidentiality

Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA.



2.102 Protection and Destruction of Confidential Information

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence.

At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations

The parties' respective obligations under this Section must survive the termination or expiration of the Contract for any reason.

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven (7) years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before



examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, information pertaining to the Contract, and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor must respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) invoices. If a balance remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.



(e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two (2) days of learning about it.

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to DTMB-Procurement.

2.122 Warranty of Merchantability

Goods provided by Contractor under this agreement must be merchantable. All goods provided under the Contract must be of good quality within the description given by the State, must be fit for their ordinary purpose, must be adequately contained and packaged within the description given by the State, must conform to the agreed upon specifications, and must conform to the affirmations of fact made by the Contractor or on the container or label.

2.123 Warranty of Fitness for a Particular Purpose

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

2.124 Warranty of Title

Contractor must, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under the Contract, must be delivered free of any rightful claim of any third person by or infringement or the like.

2.125 Equipment Warranty - Deleted - N/A

2.126 Equipment to be New

If applicable, all equipment provided under the Contract by Contractor must be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

2.127 Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, is considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items must remain consistent for the term of the Contract, unless Procurement has approved a change order pursuant to **Section 2.024**.

2.128 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of the Contract.

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of Services under the terms of the Contract, whether the Services are performed by the Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.



The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under the Contract.

All insurance coverage's provided relative to the Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in the Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in the Contract must be issued by companies that have been approved to do business in the State. See www.michigan.gov/deleg.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:

- ☒ 1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations
\$2,000,000 Products/Completed Operations Aggregate Limit
\$1,000,000 Personal & Advertising Injury Limit
\$1,000,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 2. If a motor vehicle is used to provide services or products under the Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- ☒ 4. Employers liability insurance with the following minimum limits:



\$100,000 each accident
 \$100,000 each employee by disease
 \$500,000 aggregate disease

- ☒ 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of \$1,000,000.00 with a maximum deductible of \$50,000.00.
- ☒ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
- ☐ 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: \$3,000,000.00 each occurrence and \$3,000,000.00 annual aggregate.
- ☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under the Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under the Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DTMB-Procurement, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies **MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Procurement, DTMB. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three (3) years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under the Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.



2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of the Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

2.143 Employee Indemnification

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its Subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its Subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under the Contract.

2.145 Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under the Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the



Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract;

(iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State.

(b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.

(c) If the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.



(d) If the State terminates the Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in the Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate the Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination.

If the State chooses to terminate the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate the Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State must pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d)



transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an “As-Is” basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under the Contract, at the option of the State, becomes the State’s property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

Any termination of the Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

2.160 Termination by Contractor

2.161 Termination by Contractor

If the State breaches the Contract, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate this Contract if the State (i) materially breaches its obligations to pay Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure a data incident breach within a mutually agreed time period. But the Contractor must discharge its obligations under **Section 2.160** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 180 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**.

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor’s Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor’s Subcontractors or vendors. Contractor must notify all of Contractor’s subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition



The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor must provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under the Contract. This must include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment must conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to



Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Procurement, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one (1) party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Procurement, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

**2.202 Unfair Labor Practices**

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.204 Prevailing Wage – Deleted - N/A



2.210 Governing Law

2.211 Governing Law

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws

Contractor must comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability

2.221 Limitation of Liability

The Contractor's liability for damages to the State is limited to two times the value of the Contract or \$500,000 whichever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

The State's liability for damages to the Contractor is limited to the value of the Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or



(ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

- (a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
- (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Procurement.
- (2) Contractor must also notify DTMB Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify DTMB Procurement within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

Contractor and/or all Subcontractors involved in the performance of the Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of the Contract.

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate the Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

(a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs)

(a) SLAs will be completed with the following operational considerations:



- (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
- (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
- (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
- (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
 - 1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 - 2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

(b) Chronic Failure for any Service(s) is defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service must not affect any tiered pricing levels.

(c) Root Cause Analysis must be performed on any business critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor must provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals must be rounded to two decimal places, with five and greater rounding up and four and less rounding down, unless otherwise specified.

2.243 Liquidated Damages

The parties acknowledge that system down time will interfere with the timely and proper completion of the Work which will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is any system down-time in respect of which the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of \$1000 when the system is down for four (4) hours or more on a single business day and an additional \$1000 per day for each day Contractor fails to remedy availability to at least 99% of the requirement for each weekly period.

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.152**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is \$25,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.



If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the \$25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of \$833.33 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing must not exceed \$50,000.00 per individual.

2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. but the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables Deleted - N/A

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by



execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State must not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

The State and the Contractor will continue to own their respective proprietary technologies or materials developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.270 State Standards

2.271 Existing Technology Standards

The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/dmb/0,1607,7-150-56355-107739--,00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.273 Systems Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access, and configuration management procedures.

2.280 Extended Purchasing – Deleted – N/A

2.290 Environmental Provision Deleted – N/A

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.



“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.



The Contractor's price page is based on a non-unitary fee structure – the total asset based fees equal the fixed Program Manager Fee of 8 basis points plus the cost of underlying funds and the requested State administrative fee of 5 basis points. The Non-Unitary Price Page must be utilized during the initial Contract period. An Alternate Price Page titled Unitary Pricing is also included in Attachment A; furthermore, the Alternate Price Page structure must be utilized if requested by the CCI during the term of the Contract. Refer to the fee tables below for actual pricing by investment option in basis points.

It is understood that the existing unitary fee of 35 basis points is in effect for all Investment Options (other than the Principal Plus Interest Option) from June 30, 2012 until the date of the next Program Disclosure Booklet. The new Non-Unitary Price proposal, will take effect as of the date of the next Program Disclosure Booklet through the end of the Contract term unless otherwise determined by the State. It is also understood that the Program Disclosure Booklet with the new Non-Unitary Price Proposal, is currently being drafted and expected to be finalized and implemented by fall 2012.

TOTAL ASSETS UNDER MANAGEMENT (AUM) OF ALL OPTIONS LESS THAN \$3.5 BILLION				
	Weighted Average Underlying Mutual Fund Expenses	Program Manager Fees	State Fees	Total Asset-Based Fees
Age-Based Allocation Options				
Conservative Age-Based Allocation Option				
Ages 0 - 4	15	8	5	28
Ages 5 - 8	15	8	5	28
Ages 9 - 10	15	8	5	28
Ages 11 - 12	16	8	5	29
Ages 13 - 14	13	8	5	26
Ages 15	11	8	5	24
Ages 16	10	8	5	23
Ages 17	9	8	5	22
Ages 18 +	8	8	5	21
Moderate Age-Based Allocation Option				
Ages 0 - 4	14	8	5	27
Ages 5 - 8	15	8	5	28
Ages 9 - 10	15	8	5	28
Ages 11 - 12	15	8	5	28
Ages 13 - 14	16	8	5	29
Ages 15	14	8	5	27
Ages 16	13	8	5	26
Ages 17	11	8	5	24
Ages 18 +	10	8	5	23
Aggressive Age-Based Allocation Option				
Ages 0 - 4	13	8	5	26
Ages 5 - 8	14	8	5	27
Ages 9 - 10	14	8	5	27
Ages 11 - 12	15	8	5	28
Ages 13 - 14	15	8	5	28
Ages 15	15	8	5	28
Ages 16	16	8	5	29
Ages 17	16	8	5	29
Ages 18 +	13	8	5	26
Multi-fund Options				
Global Equity Index Option (currently named the 100% Equity Option)	8	8	5	21
Balanced Option	15	8	5	28
100% Fixed Income Option	17	8	5	30
U.S. Equity Index Option (New)	78	8	5	20
International Equity Index Option (New)	12	8	5	25
Principal Plus Interest Option*	—	—	*	*

*The Contractor must work with the CCI to implement a process by which Treasury will receive an amount equal to 5 basis points of the assets of the Principal Plus Interest Option.



When the total AUM reaches \$3.5 billion, the Contractor must provide a program management fee reduction of 2 basis points as follows:

ALTERNATIVE PRICING: TOTAL AUM OF ALL OPTIONS OVER \$3.5 BILLION				
	Weighted Average Underlying Mutual Fund Expenses	Program Manager Fees	State Fees	Total Asset- Based Fees
Age-Based Allocation Options				
Conservative Age-Based Allocation Option				
Ages 0 - 4	15	6	5	26
Ages 5 – 8	15	6	5	26
Ages 9 - 10	15	6	5	26
Ages 11 – 12	16	6	5	27
Ages 13 - 14	13	6	5	24
Ages 15	11	6	5	22
Ages 16	10	6	5	21
Ages 17	9	6	5	20
Ages 18 +	8	6	5	19
Moderate Age-Based Allocation Option				
Ages 0 - 4	14	6	5	25
Ages 5 – 8	15	6	5	26
Ages 9 - 10	15	6	5	26
Ages 11 – 12	15	6	5	26
Ages 13 - 14	16	6	5	27
Ages 15	14	6	5	25
Ages 16	13	6	5	24
Ages 17	11	6	5	22
Ages 18 +	10	6	5	21
Aggressive Age-Based Allocation Option				
Ages 0 - 4	13	6	5	24
Ages 5 – 8	14	6	5	25
Ages 9 - 10	14	6	5	25
Ages 11 – 12	15	6	5	26
Ages 13 - 14	15	6	5	26
Ages 15	15	6	5	26
Ages 16	16	6	5	27
Ages 17	16	6	5	27
Ages 18 +	13	6	5	24
Multi-fund Options				
Global Equity Index Option (currently named the 100% Equity Option)	8	6	5	19
Balanced Option	15	6	5	26
100% Fixed Income Option	17	6	5	28
U.S. Equity Index Option (New)	7	6	5	18
International Equity Index Option (New)	12	6	5	23
Principal Plus Interest Option*	—	—	*	*

*The Contractor must work with the CCI to implement a process by which Treasury will receive an amount equal to 5 basis points of the assets of the Principal Plus Interest Option.



When the total AUM reaches \$4 billion, the Contractor must provide another program management fee reduction of 1 basis point as follows:

ALTERNATIVE PRICING: TOTAL AUM OF ALL OPTIONS OVER \$4 BILLION				
	Weighted Average Underlying Mutual Fund Expenses	Program Manager Fees	State Fees	Total Asset- Based Fees
Age-Based Allocation Options				
Conservative Age-Based Allocation Option				
Ages 0 - 4	15	5	5	25
Ages 5 – 8	15	5	5	25
Ages 9 - 10	15	5	5	25
Ages 11 – 12	16	5	5	26
Ages 13 - 14	13	5	5	23
Ages 15	11	5	5	21
Ages 16	10	5	5	20
Ages 17	9	5	5	19
Ages 18 +	8	5	5	18
Moderate Age-Based Allocation Option				
Ages 0 - 4	14	5	5	24
Ages 5 – 8	15	5	5	25
Ages 9 - 10	15	5	5	25
Ages 11 – 12	15	5	5	25
Ages 13 - 14	16	5	5	26
Ages 15	14	5	5	24
Ages 16	13	5	5	23
Ages 17	11	5	5	21
Ages 18 +	10	5	5	20
Aggressive Age-Based Allocation Option				
Ages 0 - 4	13	5	5	23
Ages 5 – 8	14	5	5	24
Ages 9 - 10	14	5	5	24
Ages 11 – 12	15	5	5	25
Ages 13 - 14	15	5	5	25
Ages 15	16	5	5	25
Ages 16	16	5	5	26
Ages 17	16	5	5	26
Ages 18 +	13	5	5	23
Multi-fund Options				
Global Equity Index Option (currently named the 100% Equity Option)	9	5	5	18
Balanced Option	15	5	5	25
100% Fixed Income Option	17	5	5	27
U.S. Equity Index Option (New)	7	5	5	17
International Equity Index Option (New)	12	5	5	22
Principal Plus Interest Option*	—	—	*	*

*The Contractor must work with the CCI to implement a process by which Treasury will receive an amount equal to 5 basis points of the assets of the Principal Plus Interest Option.



Attachment A, Alternative Price Page

Unitary Pricing

Under the Alternate Unitary Price Page, the Total Fees include all costs associated with providing program management services to MESP and include the average estimated underlying mutual fund expenses. The Total Fees will remain firm during any period while this fee structure is in effect. The Non-Unitary Price Page must be utilized during the initial Contract period. The Alternate Price Page (Unitary Pricing) structure may be utilized during the term of the Contract at the CCI's request upon reasonable notice to the Contractor and a Contract Change Notice will be issued will be issued by DTMB Procurement.

During any portion of the Contract term that the "Unitary Pricing" structure is in effect, the Contractor must pay the State an annual State administrative payment of \$500,000 a year in quarterly installments-. If the "Unitary Pricing" fee structure is in effect for less than a full year during the Contract term, the administrative payment will be pro-rated for each full month during the year that this fee structure is in effect..

Size of Portfolio (Assets in the Program)		Total Fees (In Basis Points)
(1) \$2 billion or less		28
(2) \$2 billion to \$2,499,999,999.99		28
(3) \$2.5 billion to \$2,999,999,999.99		28
(4) \$3 billion to \$3,499,999,999.99		28
(5) \$3.5 billion to \$3,999,999,999.99		25
(6) \$4 billion to \$4,499,999,999.99		20
(7) \$4.5 billion to \$4,999,999,999.99		20
(8) \$5 billion to \$5,499,999,999.99		20
(9) \$5.5 billion to \$5,999,999,999.99		20
(10) \$6 billion to \$6,499,999,999.99		20
(11) \$6.5 billion to \$6,999,999,999.99		20
(12) \$7 billion or greater		20



EXHIBIT 1

Security Requirements

The Contractor must comply with State and Federal statutory and regulatory requirements, and rules; National Institute of Standards and Technology (NIST) publications; Control Objectives for Information and Related Technology (COBIT); all other industry specific standards; national security best practices and all requirements herein.

The Contractor must perform annual testing of all security control requirements to determine they are working as intended. Annual certification must be provided in writing to the CCI or designee in the form of a SSAE16 or similar audit report, if applicable.

A. Governing Security Standards and Publications

The State of Michigan information is a valuable asset that must be protected from unauthorized disclosure, modification, use, or destruction. Prudent steps must be taken to ensure that its integrity, confidentiality, and availability are not compromised.

The Contractor must collect, process, store, and transfer Department of Treasury personal, confidential or sensitive data in accordance with the contractual agreement, State of Michigan policies and the laws of the State of Michigan and the United States, including, but is not limited to, the following:

1. The Michigan Identity Theft Protection Act, MCL 445.61 et seq;
2. The Michigan Social Security Number Privacy Act, MCL 445.82 et seq.
3. Family Educational Rights and Privacy Act.
4. State of Michigan Policies: The Contractor must comply with the State of Michigan information technology standards (<http://www.michigan.gov/dmb/0,1607,7-150-56355-107739--,00.html>).

B. Security Risk Assessment

The Contractor must conduct assessments of risks and identify the damage that could result from unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the Department of Treasury. Security controls should be implemented based on the potential risks. The Contractor must ensure that reassessments occur whenever there are significant modifications to the information system and that risk assessment information is updated.

C. System Security Plan

The Contractor must develop and implement a security plan that provides an overview of the security requirements for the information system. If a security plan does not exist, the Contractor must provide a description of the security controls planned for meeting those requirements. The security plan must be reviewed periodically and revised to address system/organizational changes or problems.

D. Network Security

The Contractor is responsible for the security of and access to Department of Treasury data, consistent with legislative or administrative restrictions. Unsecured operating practices, which expose other connected networks to malicious security violations, are not acceptable. The Contractor must coordinate with the Michigan Department of Technology, Management and Budget to enter the proper pointers into the State of Michigan infrastructure.

E. Data Security

The Contractor has the responsibility to protect the confidentiality, integrity, and availability of State of Michigan data that is generated, accessed, modified, transmitted, stored, disposed, or used by the system, irrespective of the medium on which the data resides and regardless of format (such as in electronic, paper or other physical form).



The Contractor must:

1. process the personal data in accordance with the personal data protection laws of the State of Michigan and the United States.
2. have in place appropriate technical and organizational internal and security controls to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected. Technical and organizational security controls must be implemented that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, presented by the processing.
3. provide secure and acceptable methods of transmitting personal, confidential or sensitive information over telecommunication devices such as data encryption (128 bit minimum), Secure Socket Layer (SSL), dedicated leased line or Virtual Private Network (VPN).
4. supply the Department of Treasury, Security Division, with information associated with security audits performed in the last three years.
5. have in place procedures so that any third party it authorizes to have access to the personal data, including processors, will respect and maintain the confidentiality, integrity, and availability of the data.
6. process the personal, confidential and sensitive data only for purposes described in the Contract.
7. identify to the Department of Treasury a contact point within its organization authorized to respond to enquiries concerning processing of the personal, confidential or sensitive data, and will cooperate in good faith with the Department.
8. not disclose or transfer the personal, confidential or sensitive data to a third party unless it is approved under this Contract.
9. not use data transferred by the Department of Treasury as a result of this Contract for marketing purposes.

F. Media Protection

1. The Contractor must implement measures to provide physical and environmental protection and accountability for tapes, diskettes, printouts, and other media containing Department of Treasury's personal, confidential and sensitive information to prevent the loss of confidentiality, integrity, or availability of information including data or software, when stored outside the system. This can include storage of information before it is input to the system and after it is output.
2. The Contractor must ensure that only authorized users have access to information in printed form or on digital media removed from the information system, physically control and securely store information media, both paper and digital, restrict the pickup, receipt, transfer, and delivery of such media to authorized personnel.

G. Media Destruction and Disposal

1. The Contractor must sanitize or destroy information system digital media containing personal, confidential or sensitive information before its disposal or release for reuse to prevent unauthorized individuals from gaining access to and using information contained on the media.
2. Personal, confidential or sensitive information must be destroyed by burning, mulching, pulverizing or shredding. If shredded, strips should not be more than 5/16-inch, microfilm should be shredded to affect a 1/35-inch by 3/8-inch strip, and pulping should reduce material to particles of one inch or smaller.
3. Disk or tape media must be destroyed by overwriting all data tracks a minimum of three times or running a magnetic strip over and under entire area of disk at least three times. If the CD, DVD or tape cannot be overwritten it must be destroyed in an obvious manner to prevent use in any disk drive unit and discarded.



Hand tearing, recycling, or burying information in a landfill are unacceptable methods of disposal. Electronic data residing on any computer systems must be purged based on retention periods required by the Department of Treasury.

H. Access Control

The Contractor must limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems) and to the types of transactions and functions that authorized users are permitted to exercise. Access must be immediately removed when a staff changes job duties or leaves the employment.

Authentication Process

Authentication is the process of verifying the identity of a user. Authentication is performed by having the user enter a user name and password in order to access the system.

To help protect information from unauthorized access or disclosure, users must be identified and authenticated per the table below prior to accessing confidential or sensitive information, initiating transactions, or activating services.

Publicly available information such as the mother's maiden name, birth date, and address as the sole authenticator is not a secure means of authentication and should not be used.

Automatic user logons are prohibited. Device-to-device logons must be secured (preferably using client certificates or password via tunneled session). For certain implementations, source restrictions (sign-on can occur only from a specific device) provide a compensating control, in addition to the ID and password.

Authentication information (e.g., a password or PIN) must never be disclosed to another user or shared among users.

The authentication process is limited to three unsuccessful attempts and must be reinstated by the authorized personnel (preferably the System security Administrator).

Password Requirements

The purpose of a password is to authenticate a user accessing the system and restrict use of a userID only to the assigned user. To the extent that the functionality is supported within the technology or product, the controls listed must be implemented.

These following controls or content rules apply at any point where a new password value is to be chosen or assigned. These rules must be enforced automatically as part of a new password content checking process:

Password Property	Value
Minimum Length	Six characters with a combination of alpha and numeric characters.
Composition	<ul style="list-style-type: none"> At least two numeric characters (0 through 9) A combination of two letters. UserID in password is not allowed
Expiration Requirement (Maximum Password Age):	No expiration required.
Revocation	Passwords should be revoked after three failed attempts. (Treasury strongly supports password revocation after three failed attempts if system allows).
Temporary passwords	<ul style="list-style-type: none"> Must be randomly chosen or generated System must force the user to change the temporary password at initial login



Change process	<p>System must force user to:</p> <ul style="list-style-type: none"> • Confirm their current password/PIN, • Reenter current password/PIN • Create a new password/PIN • Reenter new password/PIN <p>System must prevent users from being able to consecutively change their password value in a single day (The goal is to prevent recycling through password history records to reuse an earlier-used password value)</p>
Login process	Password/PIN must not appear on the screen during the login process (The exception to this is during selection of a machine-generated password).
Encryption of passwords/PINs	Passwords must be stored and transmitted with a minimum of 128-bit encryption. Passwords must be masked when entered on any screen
Compromise of password/PIN	Must be changed immediately
Forgotten password/PIN	Must be reset by authorized person (system Security Administrator)
Current user password/PIN	Must not be maintained or displayed in any readable format on the system
Audit logs	Maintain a record of when a password was changed, deleted, or revoked. The audit trail must capture all unsuccessful login and authorization attempts for a one year period.
Password history	Keep a password history and perform a check against the history to verify the password has not been used for a minimum of one year
Privileged account access (e.g. supervisor or root)	Security administrator must change the password for that account immediately when user changes responsibilities

I. System Security Application Control

Application controls apply to individual computer systems and may include such controls as data origin, input controls, processing controls, output controls, application access controls, application interfaces, audit trail controls, and system documentation. Application controls consist of mechanisms in place over each separate computer system to ensure authorized data is processed completely, accurately, and reliably. The Contractor is responsible for ensuring application controls are in place and functioning properly within their organization. Ongoing testing and reporting of controls must be part of the business process in order to have a solid understanding of risks, strengths and weaknesses. A comprehensive solution is required to ensure that business critical applications are handled efficiently and are prioritized. Dynamic recovery procedures and fail over facilities shall be incorporated into the scheduling process whenever possible; and where manual processes are needed, extensive tools must be available to minimize delays and ensure critical services are least impacted.



J. System Auditing

The Contractor must (i) create, protect, and retain information system audit log records to the extent needed to enable the monitoring, analysis, investigation, and reporting of unlawful, unauthorized, or inappropriate information system activity, and (ii) ensure that the actions of individual information system users can be uniquely traced to those users so they can be held accountable for their actions.

The Contractor must observe the following guidelines regarding system auditing:

1. Audit record should contain the following:
 - a. date and time of the event
 - b. subject identity
 - c. type of event
 - d. how data changed
 - e. where the event occurred
 - f. outcome of the event.
2. System alerts if audit log generation fails.
3. System protects audit information from unauthorized access.
4. Audit record should be reviewed by individuals with a “need to know” on a regular basis.
5. Audit logs are retained for sufficient period of time.

K. Configuration Control and Management

The configuration management policy and procedures must be consistent with applicable federal laws, directives, policies, regulations, standards and guidance.

L. Incident Reporting

1. The Contractor must immediately notify any security incidents and/or breaches to the CCI pursuant to Section 2.092 of this Contract [see Exhibit 2, Form 4621 What is an Incident? (brochure)].
2. The Contractor must have a documented and implemented Incident Response Policy and Procedure.
3. The Contractor must have an incident handling form for consistent, repeatable process for monitoring and reporting when dealing with incidents.
4. The Contractor must have an incident response resource identified to assist users in handling and reporting incidents.
5. Personnel trained in their incident response roles and responsibilities at least annually.

M. Physical and Environmental Security

The Contractor must have established physical and environmental security controls to protect systems, the related supporting infrastructure and facilities against threats associated with their physical environment.

1. The Contractor must have established environmental protection for magnetic and other media from fire, temperature, liquids, magnetism, smoke, and dust.
2. The Contractor must control all physical access points to facilities containing information systems (except those areas within the facilities officially designated as publicly accessible), review physical security logs periodically, investigate security violations or suspicious physical access activities, and initiate remedial actions.



3. The Contractor must periodically review the established physical and environmental security controls to ensure that they are working as intended.

N. Disaster Recovery and Business Continuity Plan

The Contractor must have developed, periodically update, and regularly test disaster recovery and business continuity plans designed to ensure the availability of Department of Treasury's data in the event of an adverse impact to the contractors information systems due to a natural or man-made emergency or disaster event.

O. Security Awareness Training

The Contractor must ensure their staff having access to Treasury information are made aware of the security risks associated with their activities and of applicable laws, policies, and procedures related to security identified in Section A of this document, and ensuring that personnel are trained to carry out their assigned information security related duties.

Contracted employees must obtain Department of Treasury provided security awareness training. (On-line training to be identified by the CCI).

P. Web Application Security

The Contractor must have established adequate security controls for web application(s) to provide a high level of security to protect confidentiality and integrity of personal, confidential and sensitive data. The controls include, but are not limited to:

1. Secure coding guidelines to ensure that applications are not vulnerable to, at a minimum, the following:
 - Injection flaws, particularly SQL injection, OS command injection, LDAP and Xpath injections
 - Buffer overflow
 - Insecure cryptographic storage
 - Insecure communications
 - Improper error handling
 - Cross-site scripting (XSS)
 - Improper Access Control (such as insecure direct object references, failure to restrict URL access, and directory traversal)
 - Cross-site request forgery (CSRF).
2. Authentication.
3. Authorization and access control.
4. Web application and server configuration (e.g., patch management, deletion of unnecessary services, separation of the operating system and the web server).
5. Session management (e.g., randomly generate unique session IDs, encrypt sessions, enforce session expiration date, establish time-out setting for inactive session).
6. Input validation (e.g., avoid shell commands, system calls, and malicious codes).
7. Encryption (e.g., personal, confidential and sensitive data, encryption keys, passwords, shared secret)
 - a. The system must use SSL (128 bit or higher) for secure communication between the user's browser and the system. SSL will be utilized for:
 - i. Log-on process (authentication information -UserID and passwords)
 - ii. Specific field in the HTML forms and links (URLS) within the pages.
 - iii. Cookies
 - iv. Session id
 - v. Confidential and sensitive data files
 - vi. Encryption keys, certificates, and passwords
 - vii. Audit log file.
8. Audit logs (e.g., all authentication and authorization events, logging in, logging out, failed logins).



Exhibit 2

Form 4621, What Is An Incident? (Brochure)

Exhibit 2

Michigan Department of Treasury
4621 (3-08)

What is an Incident? What is a Security Breach?

What is an Incident?

An incident is any event threatening some aspects of physical or financial security, when financial resources or items valued at \$100 or more are missing or misused, any event violating confidentiality or privacy of information, where data is manipulated or missing, or any event involving unauthorized or unlawful activity.

Examples of Incidents:

- Missing computer equipment containing non-personal information
- Missing briefcase that contains non-personal information.

Examples of Material Incidents:

- Missing laptop computer or other mobile device or paper records that do not contain Treasury personal information but do contain confidential or sensitive information
- Missing warrant stock.

What makes an incident a Security Breach?

An incident becomes a security breach when an unauthorized person gains access to or acquires:

1. Unencrypted or unredacted (data not altered or truncated) personal information, or
2. The encryption key to an area storing personal information.

Beware: An incident can become a potential security breach during the investigation process.

Examples of a Potential/Actual Security Breach:

- Missing laptop computer or other mobile device that contains Treasury personal information
- Missing paper records that contain personal information
- Accessing personal information when there is no business need for it
- Using another individual's User ID and Password to access personal information
- Stealing Treasury records that include personal information
- Hacking into records containing Treasury personal information
- Obtaining Treasury personal information from employees without proper authorization to access the information
- Unauthorized and unescorted persons entering secure areas that house personal information.

What is Personal Information?

The Identify Theft Protection Act, Public Act 452 of 2004, as amended, defines personal information as information containing the first name or initial of the first name and the last name along with one of the following:

1. Social Security number
2. Driver's License number or State Personal Identification card number
3. Account number; Credit or Debit Card number in

combination with any required security code, access code or password that would permit access to a person's financial account.

Personal information may be in written or printed form or may reside electronically on devices such as mainframes, servers, personal computers (desktops and laptops), CDs, DVDs, tapes, flash drives, memory sticks, USB keys, microfiche, PDAs, Blackberrys, cell phones, or may exist on other state-of-the-art devices that have been or may be developed.

What should I do if my laptop is missing or if an incident is suspected?

Employee must:

1. File a report with local police immediately if asset valued at \$100 or more is missing.
2. Notify immediate supervisor no later than beginning of the next business day.
3. Complete Parts 1 and 2 of Form 4000, *Incident Report* (available on Treasury's Intranet).
4. Forward the Incident Report (with attached police report if applicable) to immediate supervisor and a copy to the Department of Treasury, Security Division.

Management Staff must:

1. Report the incident immediately through the chain of command to the Treasury Division Administrator and the Security Division. If personal information is involved, follow the guidelines for Security Breach.

Exception: If another state agency/governmental entity, report incident to Treasury Disclosure Officer, Technical Services Division and the Security Division. If contractor or vendor, report incident to Contract Compliance Inspector and the Security Division.

2. The Division Administrator must notify the Bureau Director if it is a material incident or involves non-Treasury information.
3. The Bureau Director must notify the other entity immediately.
4. The Division Administrator must inform the Department of Information Technology (DIT) Agency Services (Treasury) Director right away if incident involves information technology resources.
5. Notify other Treasury divisions/offices that may be affected or should be involved with investigation.
6. Investigate and resolve the incident.
7. Finalize Form 4000* and submit it to the Department of Treasury, Security Division.

*Another entity may substitute its internal form for form 4000 if all pertinent information is included.

What should I do if I witness, discover, or am informed of a potential security breach?

Employee must:

1. Report the security breach immediately (no later than beginning of the next business day) to immediate supervisor.



2. Complete Parts 1 and 2 of Form 4000.
3. Forward Form 4000 (with attached police report if applicable) to immediate supervisor and a copy to the Department of Treasury, Security Division.

Management Staff must:

1. If the breach is ongoing, CONTAIN IT.
2. Report the potential breach immediately through the chain of command to the Bureau Director or Deputy Treasurer, whichever is applicable.
3. The Bureau Director or the Deputy Treasurer, whichever is applicable, must notify the Chief Deputy Treasurer immediately if a breach involving a database of personal information.
4. The Bureau Director must notify the other entity if the potential breach involves non-Treasury information.
5. The Division Administrator must inform the DIT Agency Services (Treasury) Director right away if incident involves information technology resources and personal information.
6. Convene appropriate personnel so the scope of the breach can be determined and a plan for appropriate action can be agreed upon.

Note: If a database of personal information is involved, the Chief Deputy Treasurer must approve the Plan of Action.

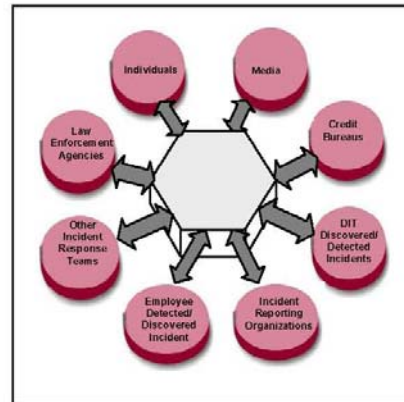
7. If appropriate, issue breach notifications by telephone, in writing, on the Web or by e-mail.
8. Notify the three major credit bureaus of the breach if more than 1,000 residents of the State of Michigan will receive or have received breach notifications.
9. Finalize Form 4000* and submit it to the Department of Treasury, Security Division.

*Another entity may substitute its internal form for form 4000 if all pertinent information is included.

Treasury must protect personal information against risks such as unauthorized access, modification or loss with reasonable security safeguards. Some safeguards are:

- Do not store confidential, personal or sensitive Treasury information on mobile devices or portable media (including laptops, notebooks, memory sticks, CDs, DVDs, floppies) unencrypted; otherwise ENCRYPT files or the full disk. (Refer to DIT Standard 1340, Storing and Managing Personal Identifying/Sensitive Information on Mobile Devices and Portable Media; also refer to Treasury Policy ET-03169 Data Security).
- Avoid sending or receiving unencrypted confidential, personal or sensitive information via e-mail.
- Avoid sending confidential, personal or sensitive information via fax.
- Secure confidential, personal or sensitive papers on the fax, printer or copy machines.
- Keep conversations at a volume level and/or in a location that will protect information.
- Back up data on a regular basis; make sure data files from an approved portable device are stored on the network server.
- Never store more data than needed.

- Shred documents with confidential, personal or sensitive information (see Treasury Policy ET-03115 Confidential Information, Handle and Discard).
- Have computers and hard drives properly wiped or overwritten when discarding (see DIT Procedure 1350.90, Secure Disposal of Installed and Removable Digital Media and Treasury Policy ET-03169).
- Use a log-in password that is not easily guessed. Make it at least eight characters long, composed of upper- and lower-case letters, numbers and symbols such as “#” (see Treasury Policy ET-03175 on Passwords).
- Never set any log-in dialog box to remember your password (see Treasury Policy ET-03175 on Passwords).
- Use a password-protected screen saver that comes on after a few minutes of inactivity. Initiate screen lock system (if a Treasury employee, press the key with Microsoft Windows logo and “L” on the keyboard) when you leave your office, even for a short period.
- Limit access to confidential, personal or sensitive information to those who need to use it to perform their job duties (see Treasury Policy ET-03164 Access Control).



For additional information, see the following guidelines in the Security Guide:

- ET-03180, Incident Reporting
- BT-03084, Security Breach Involving Personal Information
- PT-03253, Incident Reporting and Handling
- CT-03070, Incident/Security Breach Examples
- DIT Operating Procedure, How to Handle a Breach of Personal Identifiable / Sensitive Information Incidents

Other References:

- BT-03049, Employee Conduct, General Guidelines
- ET-03140 Workplace Safety
- PT-03246, Potential Dangerous Taxpayer/Debtor, Report
- PT-03095, Theft or Irregularities in Public Funds/Property or Violations of Departmental Policies and Procedures, Report and Investigate

Contact Information:

If questions, please contact Division/Bureau Security Liaison or the Security Division at (517) 636-4081.

Exhibit 2 - Page 2 of 2